UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1999/27
7 June 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Fifty-first session
Item 12 (b) of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAS DECIDED TO EXAMINE

Terrorism and human rights

Preliminary report prepared by Ms. Kalliopi K. Koufa,
Special Rapporteur

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I. INTRODUCTION

A. Mandate and purpose

1. In its resolution 1996/20 of 29 August 1996, entitled "Human rights and terrorism", the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Ms. Kalliopi K. Koufa with the task of preparing a working paper on the question of terrorism and human rights, to be considered at its forty-ninth session. In response to this request Ms. Koufa submitted to the Sub-Commission a working paper (E/CN.4/Sub.2/1997/28) identifying the diverse issues and problems involved in the discussion of this question and containing a number of proposals for a study on terrorism and human rights.

2. At its forty-ninth session, the Sub-Commission examined this working paper and in its resolution 1997/39 of 28 August 1997 expressed its deep appreciation to Ms. Koufa for her analytical, very comprehensive and well-documented paper, recommended that the Commission on Human Rights authorize her appointment as Special Rapporteur to conduct a comprehensive study on terrorism and human rights on the basis of her working paper and requested her to submit a preliminary report at its fiftieth session, a progress report at its fifty-first session and a final report at its fifty-second session.

3. At its fifty-fourth session, the Commission on Human Rights, in its decision 1998/107 of 17 April 1998, approved the appointment of Ms. Koufa as Special Rapporteur and requested the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to accomplish her task. The Economic and Social Council, in its decision 1998/278 of 30 July 1998, endorsed decision 1998/107 of the Commission on Human Rights.

4. Owing to the insufficient time between the confirmation of her appointment by the Commission and the deadline for submitting Sub-Commission documents, the Special Rapporteur was unable to prepare a preliminary report for the fiftieth session of the Sub-Commission. However, she made an oral presentation at that session, in which she highlighted the essential elements of her study, discussed her ideas on the purpose, scope, sources and structure of her future report, and expressed her wish to elaborate on them further in the framework of a substantial preliminary report, to be submitted to the Sub-Commission at its fifty-first session. After expressing its interest in the study on human rights and terrorism and in the oral statement by the Special Rapporteur concerning the basis and the orientation of the study, the Sub-Commission adopted resolution 1998/29 on 26 August 1998, in which it requested the Special Rapporteur to submit her preliminary report at its fifty-first session.

5. The present preliminary report on the question of terrorism and human rights is prepared pursuant to paragraph 1 of Sub-Commission resolution 1998/29. Its purpose is to outline the main questions to be analysed in the study and thus provide a basis for discussion by the Sub-Commission at its fifty-first session. It is expected that this discussion will assist the Special Rapporteur in finalizing the framework of the study and delimiting the problem areas to be dealt with in the study.

Consequently, this preliminary report is to be understood as a sequel to the working paper (E/CN.4/Sub.2/1997/28) and as a set of hypotheses requiring further thought, elaboration and refinement.

B. Historical background

6. Before embarking upon the essential task of this preliminary report, reference should be made to the historical background of the present study. It may be well to recall also that attempts to study the problem of terrorism as a common danger to be confronted by international law were already made before the Second World War. 1/ However, since it would not be appropriate to try to review here the history of these attempts in order to draw from it valid conclusions for solving the problems with which the international community is confronted today with regard to human rights and terrorism, suffice it to note at this point that the pre-Second World War attempts culminated in the abortive Convention for the Prevention and Punishment of Terrorism, adopted under the auspices of the League of Nations on 16 November 1937. 2/

7. Following the Second World War, the United Nations made no attempt to revive this Convention. Nonetheless, the problem of terrorism has been the subject of a number of actions in the course of the work carried out by the United Nations on the codification and progressive development of international law, since the early 1950s, 3/ and on the maintenance of international peace and security, in the early 1970s. 4/ Moreover, faced with the alarming increase of terrorist acts interfering with civil aviation in the 1960s, the international effort turned to a piecemeal (i.e. crime by crime) rather than a comprehensive approach to the problem of controlling terrorism, starting with the adoption under the auspices of the International Civil Aviation Organization of a group of conventions relating to aviation safety. 5/

8. It was not until 1972, soon after the spectacular kidnapping and killing of 11 Israeli athletes during the Olympic Games at Munich, that the issue of terrorism became the epicentre of attention and contention in the General Assembly when, by a note dated 8 September 1972, the then Secretary-General Kurt Waldheim requested that the General Assembly include in the agenda of its twenty-seventh session an additional item of an important and urgent character, entitled "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms". 6/

9. On 20 September 1972, the Secretary-General stated in support of his request that, while fully aware of the immense complexity of the problem of terrorism and violence and of the difficulties that a number of Governments would have in formulating their approach to the problem, he had nevertheless proposed the item because there was a deep and general concern with the phenomenon of international terrorism, because the scope of terrorist activity as well as its underlying causes had become increasingly international and because modern technology had added a formidable new dimension to this ancient problem. The Secretary-General felt strongly that the United Nations should face up to the international aspects of terrorism, for there was also the risk of a steady erosion, through indiscriminate violence, of the already tenuous

structure of international law, order and behaviour, in which innocent people, often completely unconnected with the issues involved, would increasingly fall victims. In his opinion, it was no good to consider the very complex phenomenon of terrorism without at the same time considering the underlying situations which gave rise to it. The roots of terrorism in many cases lay in misery, frustration, grievance and despair so deep that men were prepared to sacrifice human lives, including their own, in the attempt to effect radical changes. The Secretary-General made it clear that it was not his intention, in proposing the item, to affect principles enunciated by the General Assembly regarding colonial and dependent peoples seeking independence and liberation. 7/

10. On 23 September 1972, the General Assembly decided to include the item on its agenda, under the amended title "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes" and allocated it to the Sixth (Legal) Committee for consideration. Pursuant to a decision by the Sixth Committee requesting that the Secretariat submit to it "a thorough study on the problem of terrorism, including its origins", 8/ the Secretariat prepared a study, 9/ referring to a number of problems which will be dealt with in appropriate parts of the present study.

11. As a result of the work of the Sixth Committee, the General Assembly adopted resolution 3034 (XXVII) of 18 December 1972, providing for the setting up of an ad hoc committee, consisting of 35 members, to study the issues relating to international terrorism and to report to it. The Ad Hoc Committee on International Terrorism, which met in 1973, 1977 and 1979, examined the problem of international terrorism under three main parts - the definition, the underlying causes and the measures to be taken to combat international terrorism - and reported to the General Assembly at its twenty-eighth, thirty-second and thirty-fourth sessions. 10/ The reports of the Ad Hoc Committee clearly demonstrate how far apart the Member States were on practically all aspects of the issues examined. 11/

12. Nonetheless, in the period between 1972 and 1998, despite debates at cross purposes and persisting differences of opinion, the General Assembly managed to develop a pioneering role in the global struggle against terrorism, by adopting 4 (of the existing 12) international conventions that address crimes associated with terrorism, 12/ two declarations on measures to eliminate international terrorism 13/ and a significant body of resolutions addressing terrorism. 14/

13. The resolutions of the General Assembly addressing terrorism clearly reflect, on the one hand, an increasing resolve within the international community to condemn all acts, methods and practices of terrorism wherever and by whomever committed and, on the other hand, a growing international awareness of the existing relationship between human rights and terrorism. In this context, it is important to recall that the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights, has substantiated the danger posed by terrorism not only to the life and dignity

of the individual but also to the very concepts of human rights, fundamental freedoms and democracy that underlie the creation of the United Nations, by affirming that "[t]he acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments", 15/ and by prompting the international community to take the necessary steps to prevent and combat terrorism. 16/

14. As a result of this evolution in approach and of the broadening of interest on the part of the General Assembly in the human rights dimension of terrorism, it was hardly surprising that the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities should follow suit by adopting a series of resolutions on "Human rights and terrorism". 17/ As reflected in these resolutions, the Commission has, since 1994, entertained the idea of entrusting the Sub-Commission with the task of preparing a study on the question of terrorism and human rights, 18/ evidence proving beyond any doubt the concern of these two human rights bodies to clarify conceptually, morally and legally the neglected human rights aspects and effects of terrorism.

15. The resolutions mentioned in the preceding paragraphs refer to a number of problems relating to the human rights aspects of terrorism. The working paper on terrorism and human rights, submitted by the Special Rapporteur (E/CN.4/Sub.2/1997/28), as well as the ensuing discussions by the Sub-Commission at its forty-ninth and fiftieth sessions, highlight the central issues relevant to the understanding of the human rights dimension of terrorism and contain a number of ideas as to the scope and content of the present study. Since the purpose of this preliminary report is to present a tentative framework for the study, to identify possible priorities and to indicate the methods to be used, it is now necessary to proceed by considering briefly certain conceptual and other relevant questions that are basic to the subject-matter of terrorism and human rights.

II. SOME CONCEPTUAL AND OTHER FUNDAMENTAL QUESTIONS THAT ARE RELEVANT TO THE STUDY

A. The link between terrorism and human rights in fact and law

16. Little, if any, attention has been given to the link between terrorism and human rights. Although some of the more obvious effects of terrorism on human rights have been documented in numerous resolutions of the General Assembly, 19/ the inextricable link between terrorism and human rights and its broader international implications were largely ignored before the 1993 Vienna World Conference on Human Rights.

17. This delay is interesting and merits further discussion inasmuch as it is due to the traditional view that human rights concern only a Government and its subjects, for human rights are both the responsibility and the privilege of the Government. This traditional view has a profound conceptual basis and an important bearing on the nature and content of the link between terrorism and human rights and will, therefore, have to be looked into in the course of

the study. As will be seen later, it also involves the question of the scope of application of human rights law (see below, paras. 44-46) and, in particular, the question already raised in the working paper of whether human rights law is actually moving beyond the traditional dichotomy of individual versus State and towards the creation of obligations applicable also to non-State entities. 20/

18. The question here is rather to illuminate and elaborate on the reality of the link between terrorism and human rights, which for a long time the United Nations has not been so ready to recognize, as a result of deep ideological divisions in the attitudes of Member States concerning the issue of terrorism and its implications for the full enjoyment of human rights and fundamental freedoms. This approach involves consideration of three major, relatively distinct areas, in which terrorism puts under threat those social and political values that relate, either directly or indirectly, to the full enjoyment of human rights and fundamental freedoms, namely the areas of:

1. The life, liberty and dignity of the individual;

2. Democratic society; and

3. Social peace and public order.

19. These three areas are very important and relevant to the present study. It is, therefore, proposed that at subsequent stages of preparation of the study the analysis to be made include all three of them, in their theoretical as well as practical dimensions. In the present preliminary report, however, only a few remarks will need to be made with regard to their immediate relevance in this context.

1. The life, liberty and dignity of the individual

20. Articles 3 and 5 of the Universal Declaration of Human Rights 21/ respectively state that "[e]veryone has the right to life, liberty and security of person" and that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The International Covenant on Civil and Political Rights 22/ uses similar language in its article 6, paragraph 1, and article 7, aiming at the protection of the supreme right to life as well as the dignity and the physical and mental integrity of the individual, from which no derogation is allowed even in situations of public emergency. 23/ Thus, article 6, paragraph 1, and article 7 respectively provide that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life" and that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

21. While there is no doubt that both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights envisage positive or negative obligations of States, and that the procedures for the implementation of the International Covenant on Civil and Political Rights envisage actions only against States, it is obvious that groups or persons can also act in violation of human rights and freedoms enumerated therein of other persons, 24/ especially the human rights and freedoms that concern the life,

liberty and dignity of the individual. This is particularly true in the case of terrorism, for terrorism not only disregards human life and human dignity but actually leads to the death and injury of innocent people.

22. In this connection, it is appropriate to recall yet another provision of both International Covenants on Human Rights, namely common article 5, paragraph 1, which - using almost identical language to that of article 30 of the Universal Declaration - stipulates that "[n]othing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant".

23. Now this provision, which clearly applies not only to States but also to groups and individuals, forbids the abuse of human rights. 25/ It forbids the misuse and exploitation of the International Covenants as a pretext for violating human rights and is, therefore, very pertinent to the discussion of the issue of terrorism and human rights. For it is a well-known fact that the destruction or limitation of human rights and freedoms recognized in the International Covenants - and in the Universal Declaration - through unacceptable acts and abuses justified in terms of human rights, is a practice which is very often resorted to by terrorists, be they individuals, groups or Governments.

24. Indeed, as indicated in the working paper, 26/ terrorist acts and methods not only violate the rights of their victims but, at the same time, provoke or give an excuse for serious breaches of human rights and freedoms by overreacting State authorities that feel threatened by terrorism. Furthermore, it should be borne in mind that terrorists anticipate, and often aim to provoke the State authorities into, the kind of suppressive reaction and response that will eventually involve them in a spiral of terrorist abuse and violations of human rights, in order to create fear and dissatisfaction among the general public. Hence, the intractable problems and legal dilemmas posed by the human rights notions and pretexts invoked by the opposing sides engaged in this vicious circle of controversial aims and doubtful means.

25. Thus, it is clear that there is a close link between terrorism and the enjoyment of human rights and freedoms. This link is seen directly when groups or individuals resort to acts of terrorism and, in so doing, kill or injure individuals, deprive them of their freedom, destroy their property, or use threats and intimidation to sow fear. The link can be seen indirectly when a State's response to terrorism leads to the adoption of policies and practices that exceed the bounds of what is permissible under international law and result in human rights violations, such as extrajudicial executions, torture, unfair trials and other acts of unlawful repression, that violate the human rights not only of the terrorists but of innocent civilians. There seems to be widespread agreement on both the direct and indirect link between terrorism and respect for human rights. Moreover, the devastating effects of terrorism on the life, liberty and dignity of the individual have been clearly expressed and documented in the debates and the related pronouncements on terrorism of the competent organs and bodies of the United Nations, 27/ as well as of the regional intergovernmental organizations. 28/

2. Democratic society

26. The preceding observations point already to the second area, that of democratic society, which is threatened by terrorism. The words "democratic society" are among the most used and abused of the political vocabulary. While they may mean different things to different people, 29/ depending on their philosophical, ideological, political, cultural, social and economic perspectives, all agree that the expression "a democratic society" referred to in the Universal Declaration and in both International Covenants 30/ is a vital concept for human rights based on common values shared by human beings throughout the world community.

27. Indeed, article 29, paragraph 2, of the Universal Declaration, articles 4 and 8, paragraph 1 (a), of the International Covenant on Economic, Social and Cultural Rights, and articles 14, paragraph 1, 21 and 22, paragraph 2, of the International Covenant on Civil and Political Rights refer to the concept of democratic society in order to authorize restrictions on the rights and freedoms of the individual. 31/ Work already undertaken within the United Nations on this subject 32/ relates this concept to the freedoms of the individual and their necessary limitation within the framework of organized society in order to achieve the essential balance and harmony between the individual and the community. The fundamental reasoning here, of course, is that rights and freedoms have first to exist in order to permit of their restriction or limitation; furthermore, that the reasons which may justify their restriction or limitation must be basic values "in a democratic society", the degree of democracy in society being tested by the extent of participation in the decision-making processes, the extent of popular control of governmental decisions and the extent of the experience by ordinary citizens of ruling and being ruled. 33/

28. In the words of the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights, which undoubtedly have marked the evolution and current status as well as the new trends and visions of the international community, as represented in the United Nations, in the field of human rights: "Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives". 34/ The then Secretary-General, Boutros Boutros-Ghali, in his opening statement, in which, inter alia, he linked democracy with the guarantee of human rights and with the "reconcil[iation of] individual rights and collective rights, the rights of peoples and the rights of persons", spelled out "forcefully, that democracy is the private domain of no one. It can and ought to be assimilated by all cultures. It can take many forms in order to accommodate local realities more effectively. Democracy is not a model to copy from certain States, but a goal to be achieved by all peoples! It is the political expression of our common heritage ... like human rights, democracy has a universal dimension". 35/

29. Proceeding from these ideas, it is assumed that a democratic society requires the existence and free exercise of certain basic individual and group rights and freedoms, which the Universal Declaration and the International Covenants - not to mention at this juncture other international, regional and national human rights instruments, norms and standards - define and thereby indicate their limits. These basic rights and freedoms are inter alia:

liberty and security of person, equality and non-discrimination, due process of law, freedom of opinion and expression, freedom of assembly and association, judicial access and review.

30. A democratic society, moreover, whatever may be the cultural, political, social and economic framework in which it is achieved, is identified by certain principles and institutions, such as pluralism, the rule of law, legitimacy, political equality, popular control and public accountability of government, which, again, have their starting point in human rights and freedoms. It follows that the concept of democratic society is inseparable from fundamental human rights and freedoms, and from respect for the rights and freedoms of others. In any event, there seems to be ample consensus that a democratic society is characterized by differences of opinion, considerable freedom, and tolerance of diversity of cultures and identities subject to the law and the principle of equality and non-discrimination.

31. It will be apparent from the foregoing that terrorism is totally at odds with the concept of democratic society. Terrorist acts and methods utilized to coerce others from a free choice and full participation in the political process offend democratic society. As aptly stated by United Nations Secretary-General Boutros Boutros-Ghali in his message to the 1996 preparatory meeting for the Cairo International Symposium on Terrorism: "Terrorists threaten the very foundation of civilized life. By seeking to achieve their aims through violence, they reveal their unwillingness to subject their views to the test of a fair political process". 16/

32. In fact, terrorism can threaten democratic society in various ways. By using violence and fear as a political tool, terrorism can undermine the legitimate authority of Governments; influence ideological and political factors in order to impose its own model of society; impede citizens in their use of their rights to have a say in the decisions that affect their lives; subvert pluralism and democratic institutions through the creation of negative conditions for the functioning of the constitution; halt the democratic process and democratization; undermine free political, economic, social and cultural development; impair the quality of democratic society for all, even when it does not actually threaten its survival; lead to more terrorism and militancy; and so on. In this context, it should be recalled that the threats posed by terrorism to democratic society have already found their expression in a number of authoritative pronouncements by the organs and competent human rights bodies of the United Nations 17/ and the regional intergovernmental organizations, including the Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights. 18/

3. Social peace and public order

33. Lastly, there is the area of social peace and public order, where the effects of terrorism can also be devastating. Terrorist acts and methods involving impermissible violence and fear, whether engaged in by private individuals or in the name of the official State, will inevitably create social and political disorder and affect stability and peace. In this connection, it is appropriate to consider the actual and potential threat to stability, peace and order posed by terrorism in both its national and international dimensions.

34. To begin with the national dimension, the actual and potential threat to stability, peace and order posed by terrorism will be easily deduced from what has already been developed in the preceding sections. Terrorist outrages aiming at the destruction of human rights in order to create fear and provoke conditions that are propitious to the destruction of the prevailing social order may destabilize Governments. 39/

35. Indeed, killing innocent people, destroying property and fostering an atmosphere of alarm and terror amount not merely to a violation of the rights of the direct victims but to a solicitation of further serious breaches of human rights. In response to the terrorists' despicable conduct and the threats posed to society, the authorities of the State which is responsible for bringing the terrorist violence to an end are entitled to adopt counter-terrorist measures and may not be constrained by the normal limits of official measures for the prevention of ordinary crime. As a consequence, there is a real danger that the State will overreact to the threat of terrorism and slide towards repression and violation of the human rights not only of the terrorists but of the rest of society whose rights and liberties might be diminished in the course of discovering, apprehending and convicting the terrorists. The damaging impact and effects of terrorism on social peace and public order may, in the long run, threaten the very existence of the State.

36. This is particularly true in cases where terrorist activity becomes strongly linked to illicit trafficking in narcotic drugs, arms traffic, political assassinations and other international organized criminal activity, 40/ or in cases where terrorism takes the form of violent insurgent activity - devoted to the violent overthrow of authority - that succeeds in creating a crisis which overshadows public order and destabilizes the Government. In such cases, which are likely to have international repercussions, the potential danger posed by terrorism to regional and international stability, peace and order also becomes very clear.

37. In fact, as the Special Rapporteur pointed out in her working paper, terrorism is an international as well as a domestic phenomenon. In this age of increasing internationalization and interdependence, the national and international dimensions of terrorism are but two facets of the same dangerous social phenomenon which infringes upon the interests of all States, not only as an assault against their public order and the institutions that protect the life, liberty, dignity and security of their citizens but, at the same time, as a serious danger to peaceful international relations and cooperation, 41/ which in our day is clearly understood as encompassing human rights and values, as well as the principle of equal rights and self-determination of peoples.

38. It is no wonder, then, that the General Assembly, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, approved in its resolution 2625 (XXV) of 24 October 1970, expressed its opposition to terrorism in the following terms:

> "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts

> in another State or acquiescing in organized activities within its territory directed towards the commission of such acts ... no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

39. These widely recognized prescriptions are characteristic of the general awareness within the international community of the increased role of terrorism as a catalyst for wider conflict. The involvement of States in mounting long-range terrorist activity may not only put at risk the constitutional order, the territorial integrity and the security of targeted States but may also have profound effects on regional and international balances, and jeopardize friendly relations and international peace and order. International terrorism, then, evinces similar characteristics to those of terrorist acts and methods in the domestic context: arbitrariness, indiscriminateness in effects, non-recognition of any rules or conventions of war, inhumanity and barbaric cruelty.

B. The question of defining terrorism

40. Once the connection between human rights and terrorism is established, the Special Rapporteur would proceed further to identify other controversial questions that are deserving of study and analysis. Further, given that the Special Rapporteur has been asked to examine the human rights aspects of terrorism, it will be important for the purposes of the study to focus also on issues which are relevant to the study and which have not been fully dealt with elsewhere in the United Nations system.

41. At the outset, there are issues of definition and terminology that need to be clarified. For example, what is an act of terrorism? Who can be identified and labelled as engaging in the exercise of terrorism? Governments? State and sub-State actors? Non-State groups and individuals? In modern international relations, there is a growing concern that States are using terrorism in inter-State conflicts. On the other hand, particular crimes, including crimes that are the subject of international treaties for their suppression and punishment, such as hijacking and kidnapping, are commonly referred to as "acts of terrorism", as are bombings aimed at civilians. International humanitarian law includes specific prohibitions against the use of terror or terrorism, but does not provide a clear definition of all such acts. i2/ Furthermore, the terms "terror" and "terrorism" are not referred to at all in human rights treaties.

42. As indicated in the working paper, the international community has not yet arrived at a comprehensive, universally accepted, definition of "terrorism". i3/ In the course of the study, the Special Rapporteur may have to explore some working definitions, in order to delimit the subject matter with greater precision and, in particular, with a view to identifying its major aspects and its possible relationship to the question of accountability. In this context, it is valuable to recall that the Rome Statute of the International Criminal Court, adopted on 17 July 1998, ii/ contains a number of provisions on genocide, war crimes and crimes against humanity that prohibit the commission of certain acts that in essence form part of a

terrorist campaign. There are also provisions in global and regional instruments in international human rights law, international humanitarian law and international criminal law which, to varying degrees, relate to terrorist acts. These sources, as well as jurisprudence arising from the pronouncements of the International Court of Justice and other international and regional courts and tribunals, may also provide some guidance on the definitional components of terrorism at the international level, and will, therefore, be examined in a next phase of this study.

41. As a consequence, although finding an all-encompassing and generally acceptable definition of "terrorism" is too ambitious an aim, the Special Rapporteur considers that it may be valuable in future reports to try to elaborate with some precision on the specific acts that can be considered as "acts of terrorism" for the purposes of the study. In doing so, attention must also be given to the actors or perpetrators of terrorism, whether they are States or non-State entities.

C. The interrelated questions of the scope of application of international human rights law and of the accountability of the non-State actor

44. It must be acknowledged that the Special Rapporteur has been entrusted with a controversial mandate, and that some States which are members of the Commission on Human Rights did not vote in favour of this study. Looking to the reasons why a number of States seem to be uncomfortable with the study helps, however, to identify more accurately the controversial issues that are in need of objective analysis. Pivotal among them are the issues of the scope of application of international human rights law and of the accountability of the non-State actor. These issues are also relevant to the question of defining terrorism and of assessing who may be a perpetrator of terrorist acts. In fact, a consideration of the debates on human rights and terrorism shows, more specifically, that there is a basic disagreement on the following two key and interrelated questions.

45. First, there is the question of whether certain acts committed by terrorists, or members of armed groups acting outside the State's control, are properly characterized as human rights violations. No State seems to be in doubt that terrorist acts are deserving of condemnation and that the perpetrators of terrorism need to be punished. However, a number of States do question whether this can or should be accomplished through the application of international human rights law. 45/ This question is a complex one. It raises issues concerning the scope of application not only of the main United Nations human rights treaties, but also of international humanitarian law. It also involves questions concerning individual criminal responsibility under international law for crimes such as genocide, war crimes and crimes against humanity. The Special Rapporteur intends to take account of the new developments in all these different areas of law, including those brought about by the adoption of the Rome Statute of the International Criminal Court, in a subsequent stage of the study.

46. Related to this question of accountability under human rights law is a second controversial question, namely, whether acts of terrorism perpetrated by non-State groups are properly the subject of scrutiny and condemnation by

United Nations human rights bodies. 46/ There is no doubt that a main impetus for the creation of the Special Rapporteur's mandate has been the perception by some States that the United Nations human rights programme lacks balance as it fails to address consistently abuses perpetrated by terrorist groups. In particular, some States which face terrorist activity, and whose own counter-terrorism activities might be criticized by United Nations human rights bodies, may take the view that this perceived lack of balance paints a false picture of the human rights situation in the country. Of course, dealing with this question will require a consideration of the extent to which this perception is accurate. This in turn might require some survey of the degree to which existing United Nations human rights mechanisms do deal with terrorist acts and whether it is appropriate to ensure that these mechanisms follow this issue more closely in the future. 47/

D. Recent trends in international terrorism

47. It is essential that the more ominous characteristics of contemporary terrorism should also solicit the attention of the Special Rapporteur. At the dawn of the new millennium, new forms of terrorist threat and assault that are harder to distinguish from other criminal activity seem to point to a new era of indiscriminate violence, more dangerous and deadly than in the past. In order for the study to proceed on some empirical basis, it will also be helpful, as indicated in the working paper, to highlight some recent trends in international terrorism and provide some survey of the scope and nature of contemporary terrorism. 48/ For example, what are the new types, if any, of terrorist acts which are said to violate human rights, and how and where do they occur? What, if any, are the new kinds or breeds of terrorists? Of course, it will be difficult to provide an accurate and comprehensive survey, but we do need some sense of the scope of the problem. This survey might be based on material submitted by States and intergovernmental and non-governmental organizations, as well as further research in the framework of the competent organs and bodies of the United Nations system.

48. Admittedly, terrorism in our day is undergoing all kinds of mutations. 49/ New adversaries, new motivations and new rationales which have emerged in recent years can couple with today's increased opportunities and capabilities to launch terrorism on a trajectory towards higher levels of lethality, mass destruction and mass killing, and to challenge the conventional knowledge about it. 50/ Certain recent trends in terrorist activities highlight not only the increased potential deadliness of terrorism, but also the increased role non-State actors may play in future as perpetrators. These developments concern primarily the spread of nuclear, biological and chemical weapons, as well as the proliferation of small calibre weapons. They further concern the growth of a variety of terrorist groups and organizations with diversified motivations, funding mechanisms and strategies, and the great dispersion of power existing now at the transnational level.

49. Indeed, nobody can remain unaware of the proliferation and availability of increasingly sophisticated weaponry and weapons of mass destruction, and of the disquieting possibilities and consequences their possession by terrorists can have. In the first place, with regard to nuclear weapons, the danger of fissile material falling into the hands of terrorist elements has risen dramatically with the fall of the former Soviet Union and the putative illicit

market in nuclear materials that is reportedly surfacing in Eastern and Central Europe. 51/ According to a recent report of the Director General of the International Atomic Energy Agency, the number of incidents of theft and illicit trafficking involving the unauthorized movement of both nuclear material and other radioactive sources, i.e. material which could contribute to the production of a nuclear weapon as well as material that can pose health hazards but cannot be used in the development of a nuclear weapon, has been rising. 52/

50. In the second place, terrorist access to biological and chemical weapons, such as anthrax, ricin or sarin is easier than access to nuclear materials. Biological agents and man-made chemical compounds which attack the nervous system, skin or blood and which can kill or harm humans, animals or plants over a large area and result in a simultaneous and widespread outbreak of disease, depending on the kind of pathogen or toxic spread, 53/ can now be produced by graduate students or laboratory technicians, and general recipes are available on the Internet. 54/ The relative ease and low cost with which these weapons can be produced or acquired has therefore raised the risk of increasing recourse to them by sophisticated terrorists. In fact, the spread of sarin nerve gas on the Tokyo subway on 20 March 1995, killing 12 and injuring some 5,700 people, dramatically demonstrated the potential magnitude of the threat posed by terrorists armed with weapons of mass destruction. 55/

51. Also relevant to the discussion of recent trends in terrorism affecting the enjoyment of human rights and freedoms is, in the third place, the rapid proliferation of small calibre weapons and the illicit trade in small arms. 56/ While the rapid and widespread proliferation and increasing deadliness of small calibre weapons strengthen the position of criminal organizations which resort to terrorist acts and methods, the close relationship between the illicit trade in small arms and terrorism, drug trafficking, money laundering and other transnational crime has been recently underlined also in a number of General Assembly resolutions which do not focus specifically on terrorism. 57/

52. Indeed, with the increasing globalization of the world economy, terrorists have managed to expand their activities, to establish networks of alliances with transnational criminal organizations and to hinder law and order, particularly in a number of developing countries where criminal law enforcement may be susceptible to pressure and bribery from powerful drug barons. According to an expert on terrorism:

> "The cultivation, processing, transport and distribution of narcotics is probably the greatest single generator of political violence and crime in the world. Its profits are used to finance and arm rural guerrillas, urban terrorists and criminal gangs; also to facilitate the trade by intimidation and corruption and by keeping the army and police away". 58/

53. Thus, another trend of serious concern is the combination of terrorism and drug trafficking and its corrosive effect on the integrity of State institutions, especially in those countries in which coca and heroin growing has fallen into the hands of powerful cartels. In fact, in those cases where police officers, judges, politicians, customs officials and others responsible

for law and order find the combination of threats and bribes irresistible, or where standing up for the rule of law may risk exposing oneself or family members to kidnapping, assault and murder by organized terrorist gangs, the combination of terrorism and large-scale trafficking in illicit drugs forms yet another lethal assault weapon against human rights and the rule of law.

54. Finally, academics and experts are currently emphasizing the recent rise and proliferation of religious- or quasi-religious-inspired terrorist organizational entities, 59/ as well as the vulnerability of civil society to the destructive power of cyber-terrorism. 60/

III. CONCLUDING OBSERVATIONS

55. The issues and trends in terrorism discussed above demonstrate the actual and potential threat that the various agents of terrorism pose to human rights and freedoms, to democratic society and public order. They further magnify the rise of non-State terrorist entities with transnational reach, their potential role in challenging the ability of States to protect the rule of law and the rights of their citizens, and in threatening international peace and security.

56. While the direct relevance of international and human rights law to human rights violations resulting from State or State-sponsored terrorist activity cannot be doubted, the relevance and adequacy of international and human rights law with regard to terrorist activities of non-State actors is questionable. For non-State actors are not, strictly speaking, legally bound by the supervisory mechanisms of international and human rights law. As a consequence, in these days when transnational terrorism is making full use of the gaps in legal systems, international concern about the grave human rights abuses being committed by non-State terrorist actors is, indeed, growing.

57. As already indicated by the Special Rapporteur in her working paper and in the present preliminary report, the question of the legal accountability of non-State actors involved in the violation of human rights through acts of terrorism is a vital one. It should, therefore, be discussed further at an appropriate stage of the study, with a view also to contributing towards a more balanced approach to the major divergences of opinion regarding the proper standard of accountability, taking into account new developments in international and human rights law.

58. In the present preliminary report, other pertinent trends and issues mentioned in the working paper, such as, for example, the increasing incidence in the post-cold war era of terrorist campaigns perpetrated by or against particular minority groups or elements of the population in the framework of ethnic or nationalist/separatist conflict, or the continuing controversy about wars of national liberation and the motives advanced to justify violence in the context of the efforts of peoples to realize the right to self-determination, have not been discussed. It is clear, however, that these questions should be addressed at subsequent stages of the study, in connection with the analysis and further elaboration of other interrelated issues referred to in the present preliminary report.

59. The next phase of preparation of the study on terrorism and human rights will be devoted to analytical work on the main problems referred to in this preliminary report. The primary sources of information will be: relevant international conventions, resolutions, studies, reports and other documents prepared within the United Nations system as well as by the regional intergovernmental organizations; relevant specialized literature; and relevant information provided by governmental and non-governmental organizations. A further source of information will be the replies by States on the implications of terrorism, as well as on the effects of the fight against terrorism, on the full enjoyment of human rights, collected by the Secretary-General from all relevant sources, including Governments, specialized agencies, intergovernmental and non-governmental organizations and academic institutions, in accordance with Commission resolution 1999/27 of 26 April 1999, and made available to the Special Rapporteur also for consideration. The members of the Sub-Commission are invited to make their suggestions to the Special Rapporteur regarding the sources of information.

60. An additional method that might be used at subsequent stages could be to attempt to collect information on and to study particular examples of the impact of terrorism on the full enjoyment of human rights in different States, particularly those States that are experiencing problems in the fight against terrorism. The Special Rapporteur is ready to consult with Governments that so wish in order to present their experience in subsequent reports on terrorism and human rights.

61. The Special Rapporteur considers that, in the light of the multidimensional character of the issues concerning the relationship between human rights and terrorism, and given that terrorism is a particular form of criminality, it would be valuable to coordinate with the United Nations Commission on Crime Prevention and Criminal Justice and the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention, based in Vienna, which is the focal point for the integrated efforts of the United Nations in drug control, crime prevention and combating international terrorism, in order to reduce possible overlap and better harmonize the Special Rapporteur's work with efforts and developments on related issues.

62. Moreover, the Special Rapporteur believes it is important to liaise and coordinate with special rapporteurs, representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, whose mandates touch on the topic of human rights and terrorism. To this end, the Special Rapporteur would appreciate being given the opportunity to participate in their annual gathering in Geneva, in order also to receive and benefit from their insights.

63. Finally, the Special Rapporteur is conscious of the importance of and the need for gathering further information and carrying out further research in order to be able to elaborate further the subjects covered in this preliminary report. To this effect, it would be particularly useful if the Sub-Commission would consider authorizing the Special Rapporteur to visit Geneva, New York and Vienna, with a view to holding consultations with the competent services and bodies of the United Nations system, complementing her research and collecting all the essential and up-to-date information

and data required for the preparation of the final report. In all these efforts, the Special Rapporteur would, of course, rely on the Office of the High Commissioner for Human Rights to support her work with all the assistance required.

64. With the present study, the Sub-Commission has the opportunity to contribute to filling yet another void in existing international human rights law in an area of burning, contemporary significance and practical under-response. It is the hope of the Special Rapporteur that she will be enabled to proceed with vigour, taking into account the new trends and developments that pertain to the substance of the questions and issues contained in the present report.

Notes

1/ For an account of these attempts, see the study prepared by the United Nations Secretariat for the Sixth Committee, under the title "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes" (A/C.6/418 of 2 November 1972, para. 22 ff). See also notes 8 and 9 below and accompanying text.

2/ See LN Doc. C.546(I).M.383(I).1937.V; and see also LN Doc. C.547(I).M.384(I).1937.V, for the accompanying Convention on the Establishment of an International Criminal Court.

3/ See Yearbook of the International Law Commission, 1951, vol. II, chap. IV and 1954, vol. II, chap. III.

4/ See General Assembly resolution 2625 (XXV) of 24 October 1970 on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, addressing terrorism under the principle that States should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations ("Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to ... involve a threat or use of force"); and under the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter ("... no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State"). See also General Assembly resolution 2734 (XXV) of 16 December 1970, on the Declaration on the Strengthening of International Security, which "[s]olemnly reaffirms ... that every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State".

5/ See Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970; and Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation was signed at Montreal on 24 February 1988. For other international conventions dealing with other crimes associated with terrorism, see note 12 below and accompanying text.

6/ See A/8791 of 8 September 1972.

7/ See generally, Yearbook of the United Nations, 1972, vol. 26, pp. 639-640.

8/ See A/C.6/414 of 27 September 1972.

9/ See A/C.6/418 of 2 November 1972.

10/ See the Reports of the Ad Hoc Committee on International Terrorism, Official Records of the General Assembly, Twenty-Eighth Session, Supplement No. 28 (A/9028), 1973; Thirty-Second Session, Supplement No. 37 (A/32/37), 1977; and Thirty-Fourth Session, Supplement No. 37 (A/34/37), 1979.

11/ See also an article prepared by the United Nations Secretariat on "The prevention of international terrorism" for the International Review of Criminal Policy, No. 34 (ST/ESA/SER.M/34), 1978, pp. 67-68. After the failure of the Ad Hoc Committee of Thirty-Five on International Terrorism, established by General Assembly resolution 3034 (XXVII) of 18 December 1972, other ad hoc committees established by the General Assembly with a view to studying or dealing with specific questions and aspects of the fight against international terrorism have been the Ad Hoc Committee for the drafting of the International Convention against the Taking of Hostages (General Assembly resolution 31/103 of 15 December 1976) and the Ad Hoc Committee for the elaboration of the International Convention for the Suppression of Terrorist Bombings and, subsequently, other conventions dealing with international terrorism (General Assembly resolution 51/210 of 17 December 1996).

12/ These are: Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly on 14 December 1973; International Convention against the Taking of Hostages, adopted by the General Assembly on 17 December 1979; Convention on the Safety of United Nations and Associated Personnel, adopted by the General Assembly on 9 December 1994 and not yet in force; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly on 15 December 1997 and not yet in force. The remaining global anti-terrorist conventions are: Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988; Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; Convention for the Suppression of

Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991. For completeness, it may as well be mentioned that at the regional level there are five conventions aiming at combating acts of international terrorism: the Organization of American States Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C., on 2 February 1971; the European Convention on the Suppression of Terrorism, concluded at Strasbourg on 27 January 1977; the Dublin Agreement concerning the Application of the European Convention on the Suppression of Terrorism among Member States (European Union), signed at Dublin on 4 December 1979; the South Asian Association for Regional Cooperation (SAARC) Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987; the Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo from 22 to 24 April 1998.

13/ See Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, and Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 51/210 of 17 December 1996.

14/ See General Assembly resolutions: 3034 (XXVII) of 18 December 1972; 31/102 of 15 December 1976; 32/147 of December 1977; 34/145 of 17 December 1979; 36/109 of 10 December 1981; 38/130 of 19 December 1983; 39/159 of 17 December 1984; 40/61 of 9 December 1985; 42/159 of 7 December 1987; 44/29 of 4 December 1989; 46/51 of 9 December 1991; 48/122 of 20 December 1993; 49/60 of 9 December 1994; 49/185 of 23 December 1994; 50/53 of 11 December 1995; 50/186 of 22 December 1995; 51/210 of 17 December 1996; 52/133 of 12 December 1997; 52/165 of 15 December 1997; 53/108 of 8 December 1998.

15/ A/CONF.157/23 (25 June 1993), Part I, para. 17.

16/ Ibid. See also para. 30.

17/ See Commission resolutions 1994/46 of 4 March 1994; 1995/43 of 3 March 1995; 1996/47 of 19 April 1996; 1997/42 of 11 April 1997; 1998/47 of 17 April 1998; 1999/27 of 26 April 1999. And see Sub-Commission resolutions 1994/18 of 25 August 1994; 1996/20 of 29 August 1996; 1997/39 of 28 August 1997; 1998/29 of 26 August 1998.

18/ See Commission resolution 1994/46 of 4 March 1994, para. 5 and Sub-Commission resolution 1994/18 of 25 August 1994, para. 3.

19/ See, for example, General Assembly resolutions 40/61 of 9 December 1985, fourth preambular paragraph and paragraph 2; 32/147 of 16 December 1977, first preambular paragraph and paragraphs 1 and 4; 31/102 of 15 December 1976, first preambular paragraph and paragraphs 1 and 4; 3034 (XXVII) of 18 December 1972, first preambular paragraph and paragraphs 1 and 4; 34/145 of 17 December 1979, third preambular paragraph and paragraphs 3

and 4; 36/109 of 10 December 1981, third preambular paragraph; 38/130 of 19 December 1983, third preambular paragraph and paragraph 1; 42/159 of 7 December 1987, seventh and sixteenth preambular paragraphs and paragraphs 2 and 8; 44/29 of 4 December 1989, eighth and fourteenth preambular paragraphs and paragraphs 2, 6 and 9; 46/51 of 9 December 1991, seventh and thirteenth preambular paragraphs and paragraphs 2, 6 and 9.

20/ See E/CN.4/Sub.2/1997/28 of 26 June 1997, para. 15.

21/ General Assembly resolution 217 A (III) of 10 December 1948.

22/ General Assembly resolution 2200 A (XXI) of 16 December 1966.

23/ Article 4 of the International Covenant on Civil and Political Rights. See also General Comment No. 6, article 6 and General Comment No. 20, article 7 of the Human Rights Committee (HRI/GEN/1/Rev.1 at 6 (1994) and HRI/GEN/1/Rev.1 at 30 (1994) respectively).

24/ See, for instance, the European Court of Human Rights acknowledgement in the Ireland v. UK case, A/25, para. 149, that "it is not called upon to take cognizance of every single aspect of the tragic situation prevailing in Northern Ireland. For example, it is not required to rule on the terrorist activities in the six counties of individuals or groups, activities that are in clear disregard of human rights" (emphasis added), quoted by C. Warbrick, "Terrorism and Human Rights", in Human Rights: New Dimensions and Challenges, J. Symonides (ed.), Dartmouth, UNESCO, 1998, p. 225, note 27.

25/ See, for example, P. Sieghart, The International Law of Human Rights, Oxford, Clarendon Press, 1990, p. 105 and T. Opsahl, "Articles 29 and 30: the other side", in The Universal Declaration of Human Rights: A Commentary, A. Eide, G. Alfredsson, G. Melander, L.A. Rehof and A. Rosas (eds.), Oslo, Scandinavian University Press, 1992, p. 465.

26/ E/CN.4/Sub.2/1997/28 of 26 June 1997, para. 8.

27/ Ibid., para. 4, (d) and (e), as well as notes 17 and 19 above.

28/ See, for example, Report on terrorism in Europe, Parliamentary Assembly of the Council of Europe, doc. 4258 of 5 December 1978 and, generally, Report of the Parliamentary Conference: "European democracies facing up to terrorism" (Strasbourg, 14-16 October 1998), Committee on Legal Affairs and Human Rights, doc. AS/Jur (1999) 11, of 22 February 1999. And see, for instance, General Assembly document A/53/489 of 12 September 1998, containing the declarations adopted at the Twelfth Summit of Heads of State and Government of the Rio Group (Panama City, 4-5 September 1998), p. 9, and A/53/72-S/1998/156 of 27 February 1998, containing resolutions 53/8-P(IS), 54/8-P(IS) and 55/8-P(IS) adopted by the Islamic Summit Conference (Session of Dignity, Dialogue, Participation held at Tehran, 9-11 December 1997), p. 177 ff.

29/ See generally C. Bassiouni, "Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realisation", in Democracy: its Principles and Achievement, edited by the Inter-Parliamentary Union, Geneva, 1998, p. 2 ff.

30/ See article 29, paragraph 2 of the Universal Declaration, articles 4 and 8 paragraph 1 (a) of the International Covenant on Economic, Social and Cultural Rights, and articles 14 paragraph 1, 21, and 22 paragraph 2 of the International Covenant on Civil and Political Rights.

31/ See generally Opsahl, op. cit., note 25 above, p. 450 ff.

32/ See the study of the Special Rapporteur, E.-I. A. Daes, Freedom of the Individual under Law: an Analysis of article 29 of the Universal Declaration of Human Rights (United Nations publication, Sales No. E.89.XIV.5), and the reports of the Special Rapporteurs, D. Türk and L. Joinet, on the right to freedom of opinion and expression, E/CN.4/Sub.2/1990/11 of 18 July 1990 and E/CN.4/Sub.2/1991/9 of 16 July 1991.

33/ J. Lively, Democracy, Oxford, Blackwell, 1975, p. 51, cited by Daes, op. cit., p. 128, and also by D. Türk and L. Joinet in E/CN.4/Sub.2/1990/11, op. cit., p. 19, note 32 above.

34/ A/CONF.157/23 (25 June 1993), Part I, para. 8.

35/ DPI/1394-39399-August 1993, pp. 10 and 18.

36/ Quoted by K.M. Srivastava, "Democracy and Terrorism", in Democracy and Terrorism, G.N. Srivastava (ed.), New Delhi, International Institute for Non-Aligned Studies, 1997, p. 57.

37/ See, for example, General Assembly resolutions 48/122 of 20 December 1993, paragraph 1; 49/185 of 23 December 1994, paragraph 1; 50/186 of 22 December 1995, paragraph 2; 52/133 of 12 December 1997, paragraph 3. See also Commission resolutions 1994/46 of 4 March 1994, paragraph 1; 1995/43 of 3 March 1995, paragraph 1; 1996/47 of 19 April 1996, paragraph 2; 1997/42 of 11 April 1997, paragraph 2; 1998/47 of 17 April 1998, paragraph 3; 1999/27 of 26 April 1999, paragraph 1. And see Sub-Commission resolutions 1993/13 of 20 August 1993, paragraph 1; 1994/16 of 25 August 1994, paragraph 1; 1996/20 of 29 August 1996, paragraph 1; 1997/39 of 28 August 1997, paragraph 1.

38/ Notes 28 and 15 above.

39/ See generally G. Wardlaw, Political Terrorism: Theory, tactics and countermeasures, Cambridge, Cambridge University Press, 1982 and P. Wilkinson, Terrorism and the Liberal State, London, Macmillan, 1986.

40/ See, for instance, N.N. Vohra, "Democracy and management of terrorism", in Democracy and Terrorism, op. cit., note 36 above, pp. 176-177; and see also International Association of Penal Law, International Society for Criminology, International Society for Social Defence and International Penal and Penitentiary Foundation, Contribution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August-7 September 1990), on Effective National and International Action against: (a) Organized Crime; (b) Terrorist Criminal Activities (Topic 3 on the Provisional Agenda), in particular the reports by C. Bassiouni, pp. 55 ff., and C. Barrantes, G. Picca and A. Beristain, pp. 76 ff.

41/ See also R.H. Kupperman and D.M. Trent, Terrorism: Threat, Reality, Response, Stanford, California Hoover Institution Press, 1979, pp. 140-141 and O. Schachter, International Law in Theory and Practice, Dordrecht, M. Nijhoff Publishers, 1991, p. 163.

42/ See H.-P. Gasser, "Prohibition of terrorist acts in international humanitarian law", extract from the International Review of the Red Cross, July-August 1986.

43/ E/CN.4/Sub.2/1997/28 of 26 June 1997, paras. 11 and 17

44/ A/CONF.183/9.

45/ See, for instance, the different statements and explanations of vote recorded in the General Assembly and in the Commission on Human Rights during the adoption of their resolutions on human rights and terrorism.

46/ See, for instance, the summary record of the discussion on human rights and terrorism, restricted to members of the Sub-Commission, during the 11th meeting of its forty-seventh session (E/CN.4/Sub.2/1995/SR.11 of 11 August 1995) and, in particular, the following remarks made by Mr. A. Eide after his relating the issue to the question of minimum humanitarian standards: "The issue was also linked with the overall human rights movement which, possibly for too long, had been concentrating on repressive measures adopted by Governments and had paid too little attention to the means that were being used by those who were opposing Governments. That was an area which the human rights movement had not yet been able to address. It should do so in the immediate future" (emphasis added), p. 5.

47/ See, for instance, Note by the High Commissioner for Human Rights, "Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission" (E/CN.4/1997/3 of 30 September 1996) reporting on the exchange of views of the special rapporteurs/representatives/experts and chairpersons of working groups of the special procedures of the Commission and of the advisory services programme on "The problem of the relationship between terrorist activities and human rights in the context of participants' mandates" (agenda item 9), pp. 11-13.

48/ See E/CN.4/Sub.2/1997/28 of 26 June 1997, para. 13.

49/ W. Laqueur, "The new face of terrorism", The Washington Quarterly, Autumn 1998, p. 177.

50/ See B. Hoffmann, "Terrorism and the WMD: Some Preliminary Hypotheses", The Nonproliferation Review, Spring-Summer 1997, pp. 45-53.

51/ Ibid., at p. 50. See also Curbing Illicit Trafficking in Small Arms and Sensitive Technologies: An Action-Oriented Agenda, P. Gasparini Alves and D.B. Cipollone (eds.), UNIDIR/98/16, pp. 125-136

52/ See report of the Director General to the General Conference of the International Atomic Energy Agency, GC(40)/15 of 20 August 1996, fortieth regular session, entitled "Measures against illicit trafficking in nuclear materials and other radioactive sources". In July 1996, the International

Atomic Energy Agency and the World Customs Organization convened a joint meeting concerning the detection of and response to illicit cross-border movement of radiation material and produced a number of recommendations to States in this regard.

53/ R.A. Falkenrath, "Confronting nuclear, biological and chemical terrorism", Survival, vol. 40, No. 3, 1998, p. 46.

54/ J.S. Nye, Jr., "U.S. security policy challenges for the 21st century", reprinted from United States Foreign Policy Agenda: "U.S. security policy in a changing world", an electronic journal of the United States Information Agency, vol. 3, No. 3, July 1998, p. 3.

55/ See E.M. Spiers, "Chemical and biological terrorism", in Brassey's Defence Yearbook 1996, London and Washington, Brassey's, 1996, pp. 254-272. A Japanese government report indicates that most of the victims of the sarin gas attack continued to suffer almost four years after the attack, see Associated Press (Tokyo) report, "More than half Tokyo subway gas victims still suffering", of 28 January 1999: "More than 70 per cent of the respondents in the survey said they cannot shake off post-traumatic stress disorder and other psychological effects of the gas attack, Kyodo News agency quoted the government report as saying"; and "In replying to the multiple-choice survey, 54 per cent of the respondents said they had physical problems, while 57 per cent complained of psychological disorders, the Kyodo report said".

56/ See the very informative UNIDIR publication, op. cit., note 51, supra, pp. 1 ff.

57/ For example, in its resolutions on "International action to combat drug abuse and illicit production and trafficking", the General Assembly has repeatedly expressed its deep alarm for "the growing violence and economic power of criminal organizations and terrorist groups engaged in drug-trafficking activities and other criminal activities, such as money laundering, and illicit traffic of arms and precursors and essential chemicals, and by the increasing transnational links between them" and reaffirmed "the danger and threat posed to civil society by drug trafficking and its links to terrorism, transnational crime, money laundering and the arms trade". See General Assembly resolutions 51/64 of 12 December 1996 and 52/92 of 12 December 1997, Preamble, paras. 3 and Part II, paras. 5.

58/ R. Clutterbuck, Terrorism in an Unstable World, London, Routledge, 1994, p. 87.

59/ See, for instance, W. Laqueur, "Postmodern Terrorism", Foreign Affairs, vol. 75, No. 5, September/October 1996, pp. 32-33; id., op. cit., note 49, supra, pp. 174-176; Hoffman, op. cit., note 50, supra, pp. 45 and 47; Spiers, op. cit., note 55, supra, pp. 256-257; Nye, op. cit., note 54, supra, p. 3.

60/ See, for instance, A. Carter, J. Deutsch, and P. Zelikov, "Catastrophic Terrorism: Tackling the New Danger", Foreign Affairs, vol. 77, No. 6, November/December 1998, pp. 83 ff. And Laqueur, op. cit., note 59, supra, p. 35. And see also, The White House, Office of the Press Secretary, 22 January 1999, Remarks by the President on Keeping America Secure for the 21st Century, containing United States President Clinton's statement on new initiatives to address terrorism and the new terrorist-emerging tools and threats, as well as Press Briefing by Attorney-General Janet Reno, Secretary of HHS Donna Shalala, and Richard Clarke, President's National Coordinator for Security Infrastructure and Counterterrorism, on the expansion of the United States Administration's efforts to combat the emerging threats of biological, chemical and cyber-terrorism.